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MAR 16 2006

**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600**

In re Application of:
Mayumi Tomikawa, et al.
Application Serial No.: 09/879,098
Filed: June 13, 2001
For: APPARATUS AND METHOD FOR
GENERATING A DATA DISTRIBUTION ROUTE

**DECISION
ON PETITION**

This is a decision on the petition requesting withdrawal of the final action, filed January 12, 2006, pursuant to 37 CFR § 1.181.

Petitioner alleges that the examiner erred in holding the Office action mailed November 17, 2005 final and requests withdrawal of finality of the Office action.

A non-final Office action was mailed on March 26, 2004 rejecting all claims 1-19 as being anticipated by Naudus (US Patent No. 6,412,006). Applicant filed an amendment on July 26, 2004, wherein all independent claims were substantially amended and also new claims 20-26 were added. On November 18, 2004 the Examiner made a final Office action re-applying the Naudus reference to reject all pending claims. In a telephonic interview held on March 9, 2005 the examiner and the supervisor agreed that the final Office action of November 18, 2004 was improper. The interview summary was recorded as stating that "the Final Office action (1/18/04) is now withdrawn". On March 11, 2005, applicant filed a "Letter and Request for Contingent Extension of Time". As stated in this communication from applicant, because the previous Office action was withdrawn, no response was due and no extensions of time were required. A review of the fee history also finds that no extension of time fees were charged. On November 17, 2005 the examiner rendered a new final Office action citing a new grounds of rejection rejecting all claims of record as being anticipated by Kodialam et al (US Patent No. 6,778,531) and setting forth that the new grounds of rejection were necessitated by amendment. The new final Office action dated November 17, 2005 was also mailed with a communication titled "Notice of withdrawing/vacating the previous office action" which clearly stated that because the previous office action was withdrawn/vacated, no response was needed from applicant.

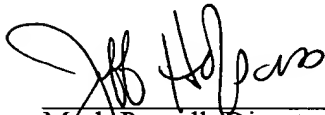
Petitioner argues that the new final Office action mailed November 17, 2005 was improper and premature. Petitioner contends that the new final rejection was necessitated by the interview, not as the result of a new amendment.

It is noted that the amendment/response filed July 26, 2004 was entered. It is also noted that the Final rejection mailed November 18, 2004 was improper, and therefore, as set forth above, it was vacated. Because the November 18, 2004 Office action was vacated, the new final Office action mailed November 17, 2005 was responsive to the last communication of record (which was in fact the July 26, 2004 amendment). It is agreed that the July 26, 2004 amendment was re-considered in light of arguments made at the March 9, 2005 interview. Nonetheless, it is deemed that the new grounds of rejection were in fact necessitated by the July 26, 2004 amendment.

The petition fails to show that applicant's amendment received July 26, 2004 did not necessitate the new grounds set forth by the examiner.

Accordingly, the petition to withdraw finality is **DENIED**. The time period for reply continues to run from the November 17, 2005 mailing date of the Final rejection.

Any request for reconsideration must be filed within two months form the date of this decision.

 acting
for 3/16/06
Mark Powell, Director
Technology Center 2600
Communications